

the merits, the Examiner issued a non-final office action, to which the Applicants duly responded. Then, the Examiner made a second restriction requirement having a date of January 2, 2003. Applicants traversed the restriction requirement, and in the next Office Action on the merits dated April 11, 2003, the Examiner indicated that Applicants arguments were persuasive and withdrew the restriction requirement. Claims 1-5, 7-11 and 13-14 were examined by the Examiner for a second time in the second office action on the merits, to which Applicants duly responded. In response thereto, the Examiner has for a third time issued a restriction requirement and restricts the claims to the same groups as in the second restriction requirement and on the same basis. The Examiner has not indicated how the need to restrict has developed given extensive prosecution of the claims and a successful response to the previous restriction requirement, so as to satisfy the Examiner's burden. (See MPEP §811).

MPEP §811 states further that the Examiner "will consider whether there will be a serious burden when restriction is not required." It is believed that the Examiner has not considered whether there would be a serious burden in this case. Since the claims have been examined on their merits twice, the claims have been rejected citing the same reference(s), the claims are drawn to the same class (Class 324, Subclass 763), and the fact that two responses on the merits have been filed, there is no known burden on the Examiner which would require a restriction in this case.

Furthermore, the Examiner attempts to restrict the claims based on a product and process of using the invention. Thus, the burden is on the Examiner to show (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process, and the Examiner must provide a reasonable example. (See MPEP §806.05(h)). However, the Examiner simply states that "the apparatus can be used to practice a plurality of methods as disclosed and as claimed." The fact

that the apparatus may be used to practice a plurality of methods does not satisfy the Examiner's burden of showing that "the product as claimed can be used in materially different process."

*(Emphasis Added)*

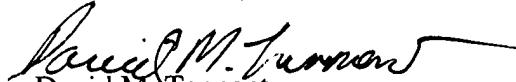
Applicants maintain, as in the second restriction requirement, the Examiner has failed to satisfy his burden of proof to show that the claims may be restricted. Notwithstanding the fact that the Examiner has not met his burden, the claims of this application have undergone extensive examination by both the Examiner and Applicants, and the Examiner has failed to indicate how any amendments made to the claims would have caused the third restriction to be made. It would be unduly burdensome on Applicants to restrict the application at this late stage of prosecution. Withdrawal of the restriction requirement is respectfully solicited.

For the reasons outlined above, the restriction requirement should be entirely withdrawn. Prompt consideration and examination of all the originally elected claims in this one case is respectfully solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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